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ABSTRACT

Changes in the legislative history of specialized education for students of limited English proficiency are described in this paper, beginning with the authorization of the Bilingual Education Act of 1968 and going through the reauthorizations of the Act in 1974, 1978, 1984, and 1988. Important events surrounding the legislative action are also described in order to provide greater understanding of the social and economic circumstances that influenced legislative changes. Examples include the civil rights movement, Supreme Court cases such as Lau v. Nichols, the Equal Education Opportunity Act, and the Lau remedies. Because the Bilingual Education Act provides competitive grants that school districts and other educational institutions may apply for, the fiscal support provided by the federal government is also reviewed. Contains 10 references. (LB)

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The Bilingual Education Act: Twenty Years Later

Gloria Stewner-Manzanares

INTRODUCTION

The Bilingual Education Act of 1968 is noted as the first official federal recognition of the needs of students with limited English speaking ability (LESA). Since 1968, the Act has undergone four reauthorizations with amendments, reflecting the changing needs of these students and of society as a whole. Even the definition of the population served has been broadened from limited English speaking to limited English proficient (LEP) students. It is important for those working with LEP students to gain an understanding of the growth of bilingual education in the United States so that they are better informed when faced with current issues in the education of LEP students.

This paper highlights changes in the legislative history of specialized education for students of limited English proficiency. It begins with the authorization of the Bilingual Education Act of 1968 and examines the reauthorizations of the Act in 1974, 1978, 1984, and 1988. Important events surrounding legislative action are also described to offer greater understanding of the social and economic circumstances that influenced legislative changes. Since the Bilingual Education Act provides competitive grants that school districts and other educational institutions may apply for, this paper also examines the fiscal support provided by the federal government.

1968 BILINGUAL EDUCATION ACT

In 1967, Senator Ralph Yarborough of Texas introduced a bill which proposed to provide assistance to school districts in establishing educational programs specifically for LESA students. Among the recommendations of this bill were the teaching of Spanish as a native language, the teaching of English as a second language, and programs designed to give Spanish-speaking students an appreciation of ancestral language and culture. Although this bill was limited to Spanish-speaking students, it led to the introduction of 37 other bills which were merged into a single measure known as Title VII of the Elementary and Secondary Education Act (ESEA) or the Bilingual Education Act, which was enacted in 1968. Title VII was the first federal recognition that LESA students have special educational needs and that in the interest of equal educational opportunity, bilingual programs that address those needs should be federally funded.

Initially, Title VII was seen largely as a remedy for civil rights violations. However, it also began the process of formally recognizing that ethnic minorities could seek differentiated services for reasons other than segregation or racial discrimination. More significantly, it encouraged instruction in a language other than English as well as cultural awareness.

In order to understand how this Act came into being, it is necessary to look at previous legislative action, judicial decisions, and the social climate of the nation at that time.

The Brown Case

In 1954, the U.S. Supreme Court ruled that school segregation based on race was unconstitutional. Although it did not specifically mention Hispanics or other ethnic minorities, the ruling stated that it applied also to "others similarly situated" (Castellanos 1983:59). While this ruling did not affect the education of non-English-speaking minorities directly, it introduced a new era in American civil rights and led the way to subsequent legislation that would create programs for the disadvantaged.

The Civil Rights Movement

During the 1960s, Blacks and other minority groups held demonstrations to protest underemployment, inadequate housing, poor representation in

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government, and lack of educational opportunity. The social climate clearly dictated that measures be taken to rectify these inequalities. In 1964, the 88th Congress passed the Civil Rights Act, which stated the concept of equality in federal law. Several parts of the Act were significant for language minority students. For example, Title IV of the Act allowed the Attorney General to initiate school desegregation suits if private citizens were unable to file suit effectively. Also, Title VI of the Act provided that any person participating in any program receiving federal financial assistance could not be discriminated against on the basis of race or national origin. Federal agencies were charged with imposing sanctions for noncompliance with the law; these sanctions included withdrawal of federal subsidies. This was important for educational institutions since many relied heavily on federal assistance.

The emphasis on equality also led to the enactment of the Elementary and Secondary Education Act (ESEA) in 1965. Title I of the ESEA provided assistance to educational agencies for children of low income families. While this benefited many inner city children, it did not target students who suffered specifically from language barriers.

Provisions of the Bilingual Education Act

The Bilingual Education Act provided funds in the form of competitive grants directly to school districts. These grants were to be used by the districts for: (1) resources for educational programs, (2) training for teachers and teacher aides, (3) development and dissemination of materials, and (4) parent involvement projects.

The Act did not explicitly require bilingual instruction or the use of the students' native language for educational purposes, but encouraged innovative programs designed to teach the students English. The Act also placed priority on low income families; non-English-speaking students from families with moderate income levels were not included.

The Act offered few guidelines for the instruction of LESA students, and school districts were left on their own to create "innovative" programs. Also, when school districts created bilingual education programs, they risked violating desegregation laws by separating these students into special classes. To further complicate matters, some states had English-only laws which were violated when bilingual education programs were introduced.

1968 Title VII Funding

Congress passed no appropriation measure for Title VII in 1968. However, the following year, it approved $7.5 million, and 27,000 students were served by Title VII-funded programs. In addition to the four major types of programs, these funds also covered development and dissemination of instructional materials. Parent involvement was encouraged by having school districts submit proposals that included "meaningful participation of the non-English-dominant community in the projects from initial planning through the evaluation process" (Castellanos 1983:84).

To receive funding for an additional year, Title VII projects were evaluated at the end of each school year. A successful project could be funded for five years, after which time the local school district would assume the costs.

1974 AMENDMENTS TO THE BILINGUAL EDUCATION ACT

The guidelines of the 1968 Bilingual Education Act were not specific and participation was voluntary. This prompted civil rights litigation alleging that equal opportunities were being denied LESA students. In 1974, Congress amended the Bilingual Education Act of 1968 to clarify the intent and design of programs for LESA students. Two of the most important events to influence the 1974 Amendments were the *Lau v. Nichols* case and the Equal Educational Opportunity Act of 1974.

Lau v. Nichols

When a lawyer in San Francisco learned that the son of one of his clients was failing school because he did not know English, the case of *Lau v. Nichols* was initiated. This case was a class-action suit brought against the San Francisco school district, alleging that 1,800 Chinese students were being denied an equal education because of their limited English skills. Although the lower courts disagreed that equal education was being denied, in 1974 the Supreme Court overruled the lower courts, arguing that the same facilities, textbooks, teachers, and curricula do not constitute equal education. Justice William O. Douglas wrote that because the students knew little or no English, they were "foreclosed from any meaningful education" (Crawford 1987:24).

A critical underpinning of the Court's decision was a memorandum issued by the Department of Health, Education and Welfare (HEW) on May 25, 1970, regarding the education of LESA children. The memorandum informed school districts that they

must take affirmative steps to rectify English language deficiencies -- steps that would go beyond providing the same books and teachers to all pupils (Teitelbaum and Hiller 1977).

Equal Education Opportunity Act

Title II of the Educational Amendments Act of 1974, the Equal Educational Opportunity Act, also affected the education of LESA students by specifically mentioning that language barriers were to be overcome by instructional programs. This Act effectively extended the *Lau* ruling to all students and school districts, not only to those receiving federal funds. School districts were required to have special programs for LESA students regardless of federal or state funding.

Specifications of the 1974 Amendments

The Bilingual Education Act was amended for the first time in 1974. The 1974 Act specified the following:

- the definition of a bilingual education program,
- program goals,
- regional support centers, and
- capacity-building efforts.

The Act defined a bilingual education program as one that provided instruction in English and in the native language of the student to allow the student to progress effectively through the educational system. English as a second language (ESL) programs alone were considered insufficient.

The goal of a bilingual program was to prepare LESA students to participate effectively in the regular classroom as quickly as possible. However, maintaining the native language and culture of the students was not excluded. The low-income criterion of the 1968 Act was removed so that all LESA students were covered.

The Act mandated the establishment of regional support centers of consultants and trainers to provide guidance and support to schools. A national clearinghouse for bilingual education was also mandated to collect and disseminate information.

Finally, the Act stipulated capacity-building efforts. The federal government would fund school districts' major new efforts to expand curricula, staff, and research for bilingual programs. This was to enable the school districts to develop enough expertise to operate bilingual education programs without federal assistance (after such programs had been established and implemented).

Funding for the 1974 Amendments

For the 1974-75 school year, Title VII of the Elementary and Secondary Education Act funded 383 school districts for classroom projects in 65 languages, including American Indian and Eskimo languages; 15 training resource centers for providing training and technical assistance to school districts; 5 centers for materials development and 3 dissemination and assessment centers. Funding increased from $7.5 million in 1969 to $68 million and served 339,600 students. These increasing numbers of programs and students served reflected expanded competition among school districts for the grants.

1978 AMENDMENTS TO THE BILINGUAL EDUCATION ACT

The Bilingual Education Act was amended again in 1978. These amendments extended the Bilingual Education Act and broadened the definition of eligible students. Although the Act was extended, funding for some programs that had been initiated since 1974 was now threatened as a result of the social and economic climate of the late 1970s. These programs experienced a number of problems that influenced public opinion. To understand this evolution of events, it is necessary to examine certain governmental actions between 1974 and 1978.

1975 Lau Remedies

To help school districts comply with the *Lau v. Nichols* ruling that a "meaningful opportunity to participate in the school programs" be guaranteed, in 1975, the HEW Office for Civil Rights (OCR) prepared and issued a set of guidelines later known as the Lau Remedies. These guidelines served two primary purposes: to determine whether a school district was in compliance with the law (and therefore in observance of the civil rights of LESA students) and to provide guidance in the development of adequate educacational plans aimed at correcting civil rights violations.

The Lau Remedies outlined, among other things, what OCR determined to be appropriate educational approaches for instructional programs for LESA students. School districts were required to develop and submit to OCR specific voluntary compliance plans if they were found to be

noncompliant with Title VI of the Civil Rights Act and if they had 20 or more students of the same language group who had been identified as having a primary or home language other than English. These 20 students did not all have to have limited English language ability (Teitelbaum and Hiller 1977).

After the Lau Remedies

While the number of programs for LESA students was increasing, a number of problems related to the implementation of the Lau Remedies emerged. One problem was that in order to provide cost-effective bilingual education programs, many school districts would consolidate their LESA students, creating segregated classes or even schools. However, the guidelines specifically prohibited such segregation of these students so that large enclaves of minority language students were not formed as a result of bilingual education programs. The guidelines allowed up to 40 percent of the students in the classroom to be English-speaking, as long as the goal of the program was to improve English language skills.

The Lau Remedies also called for the use of native language instruction (in most cases), which some citizens objected to as promoting language maintenance with federal funds. Another problem was that the expansion and increase in the number of bilingual programs that would result from the implementation of Lau Remedies would use federal and local funds at a time when school budgets were being cut because of the recession. The social and economic pressures at this time called for changes in the implementation of bilingual programs. Some of these changes were evident in the 1978 Education Amendments.

Specifications of the 1978 Amendments

The 1978 Education Amendments expanded the eligibility for bilingual programs from those who were students of "limited English speaking ability" to those who were of "limited English proficiency" (Castellanos 1983:179). This term refers to students with "sufficient difficulty speaking, reading, writing, or understanding the English language to deny such individuals the opportunity to learn successfully in classrooms where the language of instruction is English" (Public Law 95-561). Priority was also given to historically underserved LEP students.

In addition, the amendments specified the goals of transitional bilingual education programs. Such programs were to prepare limited English proficient students to enter the regular classroom as quickly as possible. The native language was to be used only to the extent necessary for students to become proficient in English. Programs designed only to maintain the native language were excluded from funding. Reading and writing skills were added to the program goals to further enable LEP students to become proficient in English (Crawford 1987).

Funding for the 1978 Amendments

Total funding for Title VII programs for 1978 was $135 million. This included funds for 565 school districts, bilingual education service centers that provided training and technical services to school districts, fellowships for graduate students, and teacher training programs for undergraduate students preparing to become bilingual teachers. Dissemination and assessment centers (DACs) were given an additional responsibility to assist school districts in evaluating their bilingual education programs. Their name was changed to evaluation, dissemination, and assessment centers (EDACs) to reflect this. Also, the National Advisory Council on Bilingual Education was authorized.

Program funding to school districts was provided for one to three years to build capacity for programs to continue after federal assistance was no longer available. By emphasizing district capacity building and by limiting the number of years that educational districts could receive funds, the Amendments further encouraged local control of education of LEP students (Levy 1984).

By the end of 1978, it was clear that the increasing number of programs was becoming more costly for the federal government. With the nation's economic difficulties, there was great pressure to cut budgets and to improve accountability for expenditures. For this reason, money was appropriated for evaluation of the effectiveness of LEP students' programs. Therefore, $20 million was designated for the Title VII Part C Research Agenda.

THE BILINGUAL EDUCATION ACT OF 1984

The Bilingual Education Act of 1984 addressed the need for increased flexibility in the implementation of programs for LEP students by giving local school districts a greater voice in deciding how LEP students should be taught. School districts were able to apply for funds for different types of programs that used various teaching strategies. This reflected a new approach to educating LEP students since the 1970s when the Lau Remedies had called for the use of native language in the instructional method.

The 1980 Proposed Lau Regulations

Since the Lau Remedies were not published in the *Federal Register* as regulations, they lacked the legal basis of a federal regulatory document. In fact, their legality was challenged in various federal courts with mixed results over the next few years. The case of *Northwest Arctic v. Department of Health Education and Welfare* in 1979 resulted in a consent decree that committed OCR, and later the Department of Education, to publish for public comment official Title VI regulations. To comply with this legal mandate, the Department of Education developed and issued for public comment in August 1980 a proposed set of rules, expecting to publish final regulations by the end of 1980.

The proposed rules had two goals: to have LEP students learn English as quickly as possible and to receive instruction in required subjects in a language they could understand until they learned English.

In public hearings on the proposed regulations, the debate focused on three questions: (1) Who should control education -- the federal government or the local government? (2) Should schools teach exclusively in English or allow the native language to be used? (3) Who should pay for bilingual education programs -- the federal government or local school districts?

Those in favor of the regulations wanted the federal government to clarify program goals for the state or local governments. Those against the regulations felt that the federal government should not dictate the school curriculum by advocating a single method of instruction.

Strong pressure to resolve this issue had been building in parts of the country where recent immigrants had settled. Local schools that had negotiated Lau plans had problems trying to accommodate LEP students from such diverse language backgrounds. One school, for example, reported having LEP students from 21 different language groups (Castellanos 1983). Finding qualified native speakers to implement a transitional bilingual program for 21 different language groups would have not been feasible.

Implementation costs were another concern. Almost $300 million in federal and state funds were being spent annually to educate LEP students. Some feared that this amount would double if school districts complied completely with the proposed Lau Regulations. Advocates of the regulations argued that the high cost was only a short term effect and that providing equal educational opportunity to more LEP students would lower dropout rates, unemployment, and by extension, crime.

During the hearings, some members of Congress tried to stop the implementation of the regulations by arguing that it was not appropriate to require instruction in any other language than English. Legislation was attached to a continuing resolution which stipulated that no funds be available to the Secretary of Education to enforce final regulations replacing the Lau Remedies. Thus, the rules could not be enforced until the following year.

In 1981, Secretary of Education T.H. Bell withdrew the regulations, thus ending the long debate. This withdrawal was part of an effort to deregulate social, educational, and human services and to encourage state officials to be responsible for financing and monitoring the education of LEP students within their own districts. In addition, the Department of Education dropped the Lau Remedies. Bilingual education programs, however, remained under federal administration and continued to receive funds directly from Washington. The funds for bilingual education that year were reduced by 25 percent.

The federal government encouraged each state to set its own priorities. There were 400 to 500 programs that had previously negotiated Lau plans with the OCR. Now those programs were free to continue with those plans or to renegotiate new options with the Department of Education.

Provisions of the 1984 Bilingual Education Act

Following the debate over local and federal control of programs for LEP students and withdrawal of the Lau Remedies, the Bilingual Education Act of 1984 provided more flexibility for state and local school districts. Breaking with the past, it allowed up to four percent of overall funds (or up to ten percent if more than $140 million was appropriated in a single fiscal year) to go to special alternative instructional programs, which did not require that native language be used. However, 75 percent of funds for instructional programs (Part A of Title VII) were still allocated to transitional bilingual education programs (Crawford 1987).

Under the 1984 Amendments, grants were awarded for several types of special programs for LEP students including:

1. transitional bilingual education programs, in which structured English language instruction is combined with a native language component and up to 40 percent of the class may be non-LEP students;

2. developmental bilingual education programs, in which full-time instruction is given in both English and a second language with the goal of achieving competence in both English and a second language;

3. special alternative instructional programs in which the native language need not be used, but English language instruction and special instructional services are given to facilitate achievement of English competency.

School districts could apply for grants for any of these programs, depending upon their needs.

The Amendments also stipulated that parents or guardians take a greater role in the education of LEP students. The schools were to explain why their child was selected for a Title VII program and inform them about available alternatives. The parents or guardians were also to be informed of their right to decline enrollment in any of the Title VII programs and accept enrollment in mainstream classes (Stein 1985).

The 1984 Amendments also offered grants for academic excellence programs and family English literacy programs. Academic excellence programs were to serve as models of exemplary special programs for LEP students and disseminate informamation on effective practices. Family English literacy programs were designed to offer instruction in the English language as well as instruction to parents on how to assist LEP students in educational achievement.

Funding for the 1984 Amendments

Total federal funding for Title VII programs in 1984 was $139.4 million. This amount reflected a slight increase over the previous two years, but did not reach the 1980 amount of $167 million. The emphasis was on the states and local school districts building enough capacity to support programs for LEP students without having to rely on federal funds.

Funding was apportioned in the following way:

- 60 percent of total funding was to be set aside for financial assistance for Part A (instructional programs),

- at least 75 percent of Part A funding was reserved for transitional bilingual education programs, and

- 4 to 10 percent of Part A funding was designated for special alternative instructional programs.

1988 BILINGUAL EDUCATION ACT

The Bilingual Education Act was reauthorized most recently in the Hawkins-Stafford Elementary and Secondary School Improvement Act of 1988. This Act includes several changes from previous reauthorizations that reflect the current emphasis on the diversity of LEP students and approaches to their education.

This diversity of the LEP student population both in language background and in previous education has led to what Secretary of Education William Bennett called the "pluralistic approach" to educating students. This approach allows local school districts to provide the instructional program that best serves their particular LEP student population. *The Condition of Bilingual Education in the Nation: 1988* from the Department of Education stated that the federal role is to encourage "local flexibility, creativity, and innovation" to meet the needs of LEP students. In this view, the federal government can provide the initial capacity building means, but the states themselves must determine and meet the needs of the local LEP student population. Under the current Bilingual Education Act, the states determine the program type needed, such as, transitional bilingual education, developmental programs, special alternative instructional programs, or other programs. This emphasis was part of a development since the 1984 Amendments, as reflected in the Bilingual Education Initiative of 1985.

The Bilingual Education Initiative

Prompted by the 1984 Amendments, Secretary of Education William Bennett proposed the Bilingual Education Initiative in 1985. He had concluded that because of the high dropout rates of LEP students, previously implemented programs were not fully meeting the needs of these students. The Bilingual Education Initiative was to increase flexibility in federal programs for LEP students to enable local school district to determine the best method of teaching LEP students. It went beyond the 1984 Amendments in (1) suggesting that school districts have the discretion to determine the extent of native language instruction required for special programs for LEP students, (2) calling for extensive parental involvement by requiring that parents or guardians be placed on advisory councils that were mandated for each school district, and (3) requiring school districts to demonstrate local capacity building to continue special programs without federal funds (Bennett 1986).

The Initiative also suggested a removal of the four to ten percent cap on the granting of funds for special alternative instructional

programs and that preference be given to those programs that quickly moved LEP students from native language to mainstream classes. Also, it clearly stated that the goal of programs for LEP students was the rapid acquisition of fluency in English.

Provisions of the 1988 Bilingual Education Act

The 1988 Bilingual Education Act authorizes 75 percent of total grant funds to school districts (Part A) for transitional bilingual education. Thus, up to 25 percent of grant funds may go to special alternative instructional programs, instead of four to ten percent in previous authorizations. This gives school systems greater opportunity to select effective alternatives to transitional bilingual education where that approach is not feasible.

In addition, there is a three-year limit on a student's participation in a transitional bilingual education program or in special alternative instructional programs. Under special circumstances, a student may continue in a program for up to two additional years (Cubillos 1988).

Family English literacy programs now include provisions for instruction in English and U.S. history and government for non-citizens who are eligible for temporary resident status under the Immigration and Naturalization Act.

Also, information to parents or guardians on the nature of Title VII programs and on their right to decline enrollment for their children in these programs must now be in a language and form that they can understand.

The 1988 legislation places great emphasis on training and retraining qualified personnel. Twenty-five percent of all Title VII appropriations is for training and retraining activities. A minimum of 500 fellowships must be granted each year to ensure that a pool of qualified personnel is available.

Another new feature of the 1988 Act is that the first 12 months of a grant to a school district, rather than only 6 months (as stipulated in previous legislation), may also be devoted to preservice activities. Grants for instructional materials development are discontinued, however, and the National Advisory and Coordinating Council on Bilingual Education is eliminated.

Funding for the 1988 Bilingual Education Act

The fiscal year 1989 authorization for the Bilingual Education Act is $152 million (Cubillos 1988). The Act specifies that:

- At least 60 percent of the total Act appropriations are reserved for Part A programs.
- Another 25 percent of total Act funds are reserved for Part C training activities.
- A state education agency is eligible for grants of at least $75,000, not to exceed 5 percent of the total funds awarded to that state under Part A in the previous year. This reflects an increase from $50,000 in previous legislation.

CONCLUSION

The 1968 Bilingual Education Act has undergone many changes that reflect the needs of the limited English proficient student population in the United States. It has evolved from offering only basic guidelines to providing more concrete regulations and encouraging greater local control of program curriculum. Use of the native language of LEP students has been a controversial issue since programs for LEP students were first instituted. Current legislation reflects the belief that school districts need to provide a variety of alternatives to enable their LEP students to reach proficiency in English and to be academically successful in mainstream classes.

Changes in bilingual education legislation reflect an evolution in public opinion as the United States accommodates new waves of immigrants. Though the education of students with limited English proficiency has been controversial at times, it has evolved in an effort to better meet LEP students' needs.

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